HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1357 of 2003 (SS)

Indra Mohan Rupen vs. State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 17.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1357 of 2003 (SS)

Sri Indra Mohan Rupen s/o Jai Lal Rupen
Revenue Inspector, Tehri Bandh Pariyojana
New Tehri ……..…… Petitioner

Versus

1. State of Uttaranchal through Secretary Revenue Govt. of Uttaranchal.
2. District Magistrate, Tehri Garhwal
3. Director, Rehabilitation, Tehri Dam Project, Tehri.
4. Sub District Magistrate, Tehri Dam Project Tehri
5. Commissioner, Garhwal Division Pauri.
6. Superintendent Engineer, Rehabilitaiton Unit Tehri Dam Project, Rishikesh. ……. Respondents

Sri M.C. Pant, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 17.11.2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to allow to the petitioner to continue on the post of Supervisor Kanoongo, Revenue Inspector in the Directorate of Rehabilitation, Tehri Dam Project.

Brief facts giving rise to the present writ petition are that the petitioner was initially appointed as Patwari in the year 1993 in the

Revenue Department. The petitioner has stated that on 9.2.1996 Commissioner directed the respondne tno.5 to arrange 10 Patwari in place of 10 Kekhpals for doing the work of rehabilitation in Tehri Dam Project. The petitioner was sent to deputation in the office of Director, Rehabilitation vide order dated 31.5.1996.

The petitioner has stated that on 9.7.96 he was directed to report in the officer of Tehri Hydro Development Corporation and he was attached with S.D.M. Tehri. On 3.7.2000 the petitioner was promoted to the post of Supervisor Kanoongo in the pay scale 4500-7000 with the condition that if any senior Patwari will be promoted against this vacant post then the petitioner will be automatically reverted to his original post. Thereafter the petitioner has prayed vide letter dated 13.9.99 to send him on training for the post of Supervisor Kanoongo and respondent no.5 vide letter dated 12.6.2000 has sent the name of the petitioner for Supervisor Kanoongo Training against the vacant post. T.H.D.C. has also recommended the name of the petitioner on the ground that the petitioner has worked in the department and has sufficient experience of the said job. On 18.3.2000 recommendation was made by the Director, T.H.D.C. for promotion of the petitioner on the post of Supervisor Kanoongo.

On 17.9.2001 of Chief Revenue Commissioner, Uttaranchal has directed all the District Magistrate to prepare the gradation list of

Registrar Kanoongo, Supervisor Kanoongo, Patwari, Sangrah Amin etc. and in compliance thereof the respondent no.3 has sent a gradation list in which the name of the petitioner has been shown at serial number 1.

According to the case of the petitioner on 9.9.2002, the respondent no.4 has passed the order on 30.10.2003 which the petitioner was reverted to his original post of Patwari in his parent department and ad hoc promotion was given to one Sri Kailash Chandra Negi and Sri Dinesh Bhusan Negi who were posted as Patwari in District Pauri Garhwal.

The petitioner has made a representation before the respondent No.1 who has directed the respondents no.3 and 4 to submit their comments.

Again on 2.1.2003 respondent no.3 issued letter by granting the pay scale of Supervisor Kanoongo to those untrained persona and directed to adjust the excess payment made to the petitioner on the post of Supervisor Kanoongo.

The petitioner has made a representation on 16.1.2003 to the Commissioner Garhwal Region, Pauri Garhwal. The petitioner has also stated that he has made a representation to the respondent no.3 for payment of his salary but no salary has been paid to the petitioner. The petitioner also made a complaint on 202.2003 to the

Commissioner, Garhwal Mandal for non-compliance of his order, who has directed the respondent no.2 and 3 that till the final decision, the petitioner shall remain on the post of Revenue Inspector. The petitioner has alleged that despite of the order passed by the Commissioner Garhwal Division, respondents no.2 and 3 have not paid salary to the petitioner.

The petitioner has further stated that he filed a writ petition No. 242 of 2003 (SS) in this Court. This court while disposing of the writ petition on 13.6.2003 passed the order directing the Commissioner, Garhwal Division to take action against the responsible officers who are not complying his order. The Commissioner, Garhwal Division vide order dated 18.9.2003 has directed respondent no.3 to show cause as to why the orders passed by him are not being complied with.

The petitioner has further alleged that respondents no.3 and 4 are annoyed with the petitioner and therefore, are not complying the orders of the commissioner and are not paying salary to the petitioner.

The Superintending Engineer, Tehri Dam project has passed an order on 8.10.2003 granting pay to the petitioner for the post of Supervisor Inspector up to 31.10.2003 and thereafter to revert him to his parent Department. The reason shown for reversion of the petitioner is that there is no need of further revenue staff in Rehabilitation Directorate. It has also been mentioned by the

petitioner that even though the respondent no.2 vide letter 17.2.2003 asked the Irrigation Department to send a Revenue officer and two Amins to the Rehabilitation Directorate.

The learned counsel for the petitioner has submitted that ad hoc promotion has been made in place of the petitioner by replacing him. He has placed reliance on the Apex Court's judgment in the case of State of Haryana and others vs. Piara Singh and others, (1992) 4 SCC 118. The observations of the Apex Court are as under:-

"Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only be a regularly selected employee. This necessary to avoid arbitrary action on the part of the appointing authority."

The petitioner has submitted that in the order dated 30.10.2003 it has been pointed out that there is no requirement of the staff even then ad hoc promotions have been made replacing the petitioner.

In the circumstances of the case respondent no.1 shall pass a fresh order after taking into consideration the grievances of the petitioner and also the mala fides alleged by the petitioner in his writ petition within a period of six weeks after the receipt of the certified copy of this order.

Order dated 30.10.2003 and 31.10.2003 shall remain in abeyance till fresh orders are passed.

Consequently the writ petition is disposed of. No order as to costs.

17.11.2003 **(Rajesh Tandon, J.)**
*Dhyani